

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN ASSEMBLY APRIL 26, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1867

Introduced by Assembly Member Harkey

February 12, 2010

An act to amend Section 65583.1 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1867, as amended, Harkey. Land use: local planning: housing element program.

The Planning and Zoning Law authorizes the Department of Housing and Community Development to allow a city or county to substitute the provision of units for up to 25% of the city's or county's obligation to identify adequate sites for any income category in its housing element if the city or county includes in its housing element a program committing the city or county to provide units in that income category within the city or county that will be made available through the provision of committed assistance, during the planning period covered by the element, to low- and very low income households at affordable housing costs or affordable rents, as defined. In order for a unit to qualify for inclusion in this program, ~~the city or county~~ *it* must meet one of several; specified criteria, including the criterion of being located in a multifamily rental housing complex of 4 or more units, ~~as specified~~ *converted with committed assistance from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenant and restrictions for the unit, and not acquired by eminent domain, and*

constituting a net increase in the community's stock of low- and very low income housing.

This bill would revise the above-described criterion of being located in a multifamily rental housing complex of 4 or more units, as specified, and replace it with the criterion by changing the element of that criterion of being located in a multifamily rental or ownership housing complex of 4 or more units to, instead, being located in a multifamily rental or ownership housing complex of 3 or more units, as specified.

The Planning and Zoning Law requires specified requirements to be met in order for a unit to be considered as converted by acquisition or the purchase of affordability covenants, and thereby within the above-described criterion.

This bill would add to those requirements the requirement, for units located in multifamily ownership housing complexes with 3 or more units, that at least an equal number of new-construction multifamily rental units affordable to lower income households have been constructed in the city or county within the same planning period as the number of ownership units to be converted.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65583.1 of the Government Code is
2 amended to read:
3 65583.1. (a) The Department of Housing and Community
4 Development, in evaluating a proposed or adopted housing element
5 for substantial compliance with this article, may allow a city or
6 county to identify adequate sites, as required pursuant to Section
7 65583, by a variety of methods, including, but not limited to,
8 redesignation of property to a more intense land use category and
9 increasing the density allowed within one or more categories. The
10 department may also allow a city or county to identify sites for
11 second units based on the number of second units developed in
12 the prior housing element planning period whether or not the units
13 are permitted by right, the need for these units in the community,
14 the resources or incentives available for their development, and
15 any other relevant factors, as determined by the department.
16 Nothing in this section reduces the responsibility of a city or county

1 to identify, by income category, the total number of sites for
2 residential development as required by this article.

3 (b) Sites that contain permanent housing units located on a
4 military base undergoing closure or conversion as a result of action
5 pursuant to the Defense Authorization Amendments and Base
6 Closure and Realignment Act (Public Law 100-526), the Defense
7 Base Closure and Realignment Act of 1990 (Public Law 101-510),
8 or any subsequent act requiring the closure or conversion of a
9 military base may be identified as an adequate site if the housing
10 element demonstrates that the housing units will be available for
11 occupancy by households within the planning period of the
12 element. No sites containing housing units scheduled or planned
13 for demolition or conversion to nonresidential uses shall qualify
14 as an adequate site.

15 Any city, city and county, or county using this subdivision shall
16 address the progress in meeting this section in the reports provided
17 pursuant to paragraph (1) of subdivision (b) of Section 65400.

18 (c) (1) The Department of Housing and Community
19 Development may allow a city or county to substitute the provision
20 of units for up to 25 percent of the community's obligation to
21 identify adequate sites for any income category in its housing
22 element pursuant to paragraph (1) of subdivision (c) of Section
23 65583 where the community includes in its housing element a
24 program committing the local government to provide units in that
25 income category within the city or county that will be made
26 available through the provision of committed assistance during
27 the planning period covered by the element to low- and very low
28 income households at affordable housing costs or affordable rents,
29 as defined in Sections 50052.5 and 50053 of the Health and Safety
30 Code, and which meet the requirements of paragraph (2). Except
31 as otherwise provided in this subdivision, the community may
32 substitute one dwelling unit for one dwelling unit site in the
33 applicable income category. The program shall do all of the
34 following:

35 (A) Identify the specific, existing sources of committed
36 assistance and dedicate a specific portion of the funds from those
37 sources to the provision of housing pursuant to this subdivision.

38 (B) Indicate the number of units that will be provided to both
39 low- and very low income households and demonstrate that the

1 amount of dedicated funds is sufficient to develop the units at
2 affordable housing costs or affordable rents.

3 (C) Demonstrate that the units meet the requirements of
4 paragraph (2).

5 (2) Only units that comply with subparagraph (A), (B), or (C)
6 qualify for inclusion in the housing element program described in
7 paragraph (1), as follows:

8 (A) Units that are to be substantially rehabilitated with
9 committed assistance from the city or county and constitute a net
10 increase in the community's stock of housing affordable to low-
11 and very low income households. For purposes of this
12 subparagraph, a unit is not eligible to be "substantially
13 rehabilitated" unless all of the following requirements are met:

14 (i) At the time the unit is identified for substantial rehabilitation,
15 (I) the local government has determined that the unit is at imminent
16 risk of loss to the housing stock, (II) the local government has
17 committed to provide relocation assistance pursuant to Chapter 16
18 (commencing with Section 7260) of Division 7 of Title 1 to any
19 occupants temporarily or permanently displaced by the
20 rehabilitation or code enforcement activity, or the relocation is
21 otherwise provided prior to displacement either as a condition of
22 receivership, or provided by the property owner or the local
23 government pursuant to Article 2.5 (commencing with Section
24 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and
25 Safety Code, or as otherwise provided by local ordinance; provided
26 the assistance includes not less than the equivalent of four months'
27 rent and moving expenses and comparable replacement housing
28 consistent with the moving expenses and comparable replacement
29 housing required pursuant to Section 7260, (III) the local
30 government requires that any displaced occupants will have the
31 right to reoccupy the rehabilitated units, and (IV) the unit has been
32 found by the local government or a court to be unfit for human
33 habitation due to the existence of at least four violations of the
34 conditions listed in subdivisions (a) to (g), inclusive, of Section
35 17995.3 of the Health and Safety Code.

36 (ii) The rehabilitated unit will have long-term affordability
37 covenants and restrictions that require the unit to be available to,
38 and occupied by, persons or families of low- or very low income
39 at affordable housing costs for at least 20 years or the time period
40 required by any applicable federal or state law or regulation.

1 (iii) Prior to initial occupancy after rehabilitation, the local code
2 enforcement agency shall issue a certificate of occupancy indicating
3 compliance with all applicable state and local building code and
4 health and safety code requirements.

5 (B) Units that are located in a multifamily rental *or ownership*
6 housing complex of ~~four~~ *three* or more units, are converted with
7 committed assistance from the city or county from nonaffordable
8 to affordable by acquisition of the unit or the purchase of
9 affordability covenants and restrictions for the unit, are not acquired
10 by eminent domain, and constitute a net increase in the
11 community's stock of housing affordable to low- and very low
12 income households. For purposes of this subparagraph, a unit is
13 not converted by acquisition or the purchase of affordability
14 covenants unless all of the following occur:

15 (i) The unit is made available *for rent* at a cost affordable to
16 low- or very low income households.

17 (ii) At the time the unit is identified for acquisition, the unit is
18 not available at an affordable housing cost to either of the
19 following:

20 (I) Low-income households, if the unit will be made affordable
21 to low-income households.

22 (II) Very low income households, if the unit will be made
23 affordable to very low income households.

24 (iii) At the time the unit is identified for acquisition the unit is
25 not occupied by low- or very low income households or if the
26 acquired unit is occupied, the local government has committed to
27 provide relocation assistance prior to displacement, if any, pursuant
28 to Chapter 16 (commencing with Section 7260) of Division 7 of
29 Title 1 to any occupants displaced by the conversion, or the
30 relocation is otherwise provided prior to displacement; provided
31 the assistance includes not less than the equivalent of four months'
32 rent and moving expenses and comparable replacement housing
33 consistent with the moving expenses and comparable replacement
34 housing required pursuant to Section 7260.

35 (iv) The unit is in decent, safe, and sanitary condition at the
36 time of occupancy.

37 (v) The unit has long-term affordability covenants and
38 restrictions that require the unit to be affordable to persons of low-
39 or very low income for not less than 55 years.

(vi) *For units located in multifamily ownership housing complexes with three or more units, at least an equal number of new-construction multifamily rental units affordable to lower income households have been constructed in the city or county within the same planning period as the number of ownership units to be converted.*

(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is within an “assisted housing development,” as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, “committed assistance” means that the city or county enters into a legally enforceable agreement during the period from the beginning of the projection

period until the end of the second year of the planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. “Committed assistance” does not include tenant-based rental assistance.

(5) For purposes of this subdivision, “net increase” includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, “the time the unit is identified” means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) In the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability

1 covenants, or the preservation of any housing unit within two years
2 after committed assistance was provided to that unit, it shall be
3 prohibited from identifying units pursuant to subparagraph (A),
4 (B), or (C) of paragraph (2) in the housing element that it adopts
5 for the next planning period, as defined in Section 65588, above
6 the number of units actually provided or preserved due to
7 committed assistance.

8 ~~SECTION 1. Section 65583.1 of the Government Code is~~
9 ~~amended to read:~~

10 ~~65583.1. (a) The Department of Housing and Community~~
11 ~~Development, in evaluating a proposed or adopted housing element~~
12 ~~for substantial compliance with this article, may allow a city or~~
13 ~~county to identify adequate sites, as required pursuant to Section~~
14 ~~65583, by a variety of methods, including, but not limited to,~~
15 ~~redesignation of property to a more intense land use category and~~
16 ~~increasing the density allowed within one or more categories. The~~
17 ~~department may also allow a city or county to identify sites for~~
18 ~~second units based on the number of second units developed in~~
19 ~~the prior housing element planning period whether or not the units~~
20 ~~are permitted by right, the need for these units in the community,~~
21 ~~the resources or incentives available for their development, and~~
22 ~~any other relevant factors, as determined by the department.~~
23 ~~Nothing in this section reduces the responsibility of a city or county~~
24 ~~to identify, by income category, the total number of sites for~~
25 ~~residential development as required by this article.~~

26 ~~(b) Sites that contain permanent housing units located on a~~
27 ~~military base undergoing closure or conversion as a result of action~~
28 ~~pursuant to the Defense Authorization Amendments and Base~~
29 ~~Closure and Realignment Act (Public Law 100-526), the Defense~~
30 ~~Base Closure and Realignment Act of 1990 (Public Law 101-510),~~
31 ~~or any subsequent act requiring the closure or conversion of a~~
32 ~~military base may be identified as an adequate site if the housing~~
33 ~~element demonstrates that the housing units will be available for~~
34 ~~occupancy by households within the planning period of the~~
35 ~~element. No sites containing housing units scheduled or planned~~
36 ~~for demolition or conversion to nonresidential uses shall qualify~~
37 ~~as an adequate site.~~

38 ~~Any city, city and county, or county using this subdivision shall~~
39 ~~address the progress in meeting this section in the reports provided~~
40 ~~pursuant to paragraph (1) of subdivision (b) of Section 65400.~~

~~(e) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 where the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:~~

~~(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.~~

~~(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.~~

~~(C) Demonstrate that the units meet the requirements of paragraph (2).~~

~~(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:~~

~~(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:~~

~~(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any~~

~~1 occupants temporarily or permanently displaced by the
2 rehabilitation or code enforcement activity, or the relocation is
3 otherwise provided prior to displacement either as a condition of
4 receivership, or provided by the property owner or the local
5 government pursuant to Article 2.5 (commencing with Section
6 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and
7 Safety Code, or as otherwise provided by local ordinance; provided
8 the assistance includes not less than the equivalent of four months'
9 rent and moving expenses and comparable replacement housing
10 consistent with the moving expenses and comparable replacement
11 housing required pursuant to Section 7260, (III) the local
12 government requires that any displaced occupants will have the
13 right to reoccupy the rehabilitated units, and (IV) the unit has been
14 found by the local government or a court to be unfit for human
15 habitation due to the existence of at least four violations of the
16 conditions listed in subdivisions (a) to (g), inclusive, of Section
17 17995.3 of the Health and Safety Code.~~

~~18 (ii) The rehabilitated unit will have long-term affordability
19 covenants and restrictions that require the unit to be available to,
20 and occupied by, persons or families of low- or very low income
21 at affordable housing costs for at least 20 years or the time period
22 required by any applicable federal or state law or regulation.~~

~~23 (iii) Prior to initial occupancy after rehabilitation, the local code
24 enforcement agency shall issue a certificate of occupancy indicating
25 compliance with all applicable state and local building code and
26 health and safety code requirements.~~

~~27 (B) Units that are located in a multifamily rental or ownership
28 housing complex of three or more units, are converted with
29 committed assistance from the city or county from nonaffordable
30 to affordable by acquisition of the unit or the purchase of
31 affordability covenants and restrictions for the unit, are not acquired
32 by eminent domain, and constitute a net increase in the
33 community's stock of housing affordable to low- and very low
34 income households. For purposes of this subparagraph, a unit is
35 not converted by acquisition or the purchase of affordability
36 covenants unless all of the following occur:~~

~~37 (i) The unit is made available for rent at a cost affordable to
38 low- or very low income households.~~

~~(ii) At the time the unit is identified for acquisition, the unit is not available at an affordable housing cost to either of the following:~~

~~(I) Low-income households, if the unit will be made affordable to low-income households.~~

~~(II) Very low income households, if the unit will be made affordable to very low income households.~~

~~(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households or if the acquired unit is occupied, the local government has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.~~

~~(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.~~

~~(v) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 55 years.~~

~~(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:~~

~~(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.~~

~~(ii) The unit is within an "assisted housing development," as defined in paragraph (3) of subdivision (a) of Section 65863.10.~~

~~(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy~~

~~contracts, mortgage prepayment, or expiration of restrictions on use.~~

~~(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.~~

~~(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.~~

~~(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.~~

~~(4) For purposes of this subdivision, “committed assistance” means that the city or county enters into a legally enforceable agreement during the period from the beginning of the projection period until the end of the second year of the planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. “Committed assistance” does not include tenant-based rental assistance.~~

~~(5) For purposes of this subdivision, “net increase” includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.~~

~~(6) For purposes of this subdivision, “the time the unit is identified” means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.~~

~~(7) In the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and~~

1 to the department within 30 days of making its report to the
2 legislative body, on its progress in providing units pursuant to this
3 subdivision. The report shall identify the specific units for which
4 committed assistance has been provided or which have been made
5 available to low- and very low income households, and it shall
6 adequately document how each unit complies with this subdivision.
7 If, by July 1 of the third year of the planning period, the city or
8 county has not entered into an enforceable agreement of committed
9 assistance for all units specified in the programs adopted pursuant
10 to subparagraph (A), (B), or (C) of paragraph (2), the city or county
11 shall, not later than July 1 of the fourth year of the planning period,
12 adopt an amended housing element in accordance with Section
13 65585, identifying additional adequate sites pursuant to paragraph
14 (1) of subdivision (c) of Section 65583 sufficient to accommodate
15 the number of units for which committed assistance was not
16 provided. If a city or county does not amend its housing element
17 to identify adequate sites to address any shortfall, or fails to
18 complete the rehabilitation, acquisition, purchase of affordability
19 covenants, or the preservation of any housing unit within two years
20 after committed assistance was provided to that unit, it shall be
21 prohibited from identifying units pursuant to subparagraph (A),
22 (B), or (C) of paragraph (2) in the housing element that it adopts
23 for the next planning period, as defined in Section 65588, above
24 the number of units actually provided or preserved due to
25 committed assistance.

O